

**THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G. ROHINI**

WRIT PETITION No.26639 of 2007

Date: 13th DECEMBER, 2007

Between :

M/s.Divya Medical Agencies, Hyderabad.

.....Petitioner

And

The Joint Commissioner (CT), Legal,
Andhra Pradesh, Hyderabad and others..

.....Respondents.

**THE HON'BLE SMT. JUSTICE T. MEENA KUMARI
AND
THE HON'BLE MS. JUSTICE G. ROHINI**

WRIT PETITION No. 26639 of 2007

-

-
ORDER : (Per Hon'ble Smt. Justice T. Meena Kumari)

Heard learned Counsel for the parties. With their consent, the Writ Petition is being disposed of at this stage.

The petitioner filed the present writ petition seeking for a writ of mandamus declaring the action of the 1st respondent in rejecting the revision (stay) application filed by the petitioner in respect of the penalty for the assessment year 2003-04 (APGST), by his order in C.C.T's Ref. No. LV(2)/845 of 2007, dated 16.11.2007 as illegal, arbitrary and without jurisdiction.

The brief facts of the case are that the petitioner is an assessee on the rolls of the Commercial Tax Officer, Park Road Circle, Vijayawada, the 3rd respondent herein. While so, it was assessed under A.P.G.S.T. Act, for the year 2003-2004. The assessing authority through order dated 14.12.2004 while determining the gross turnover proposed for tax at Rs. 2,68,26,120/- observed that the petitioner has suppressed sales to the extent of Rs. 11,41,714/-. While exempting an amount of Rs.2,56,84,410-00, it determined the net turn over at Rs. 22,83,430/- and directed the petitioner to pay the tax at 10% on the said amount which worked out to Rs. 2,28,343/-. Since the petitioner has paid an amount of Rs. 1,14,171/-, after deducting the said amount, it directed

the petitioner to pay the balance tax of Rs. 1,14,172-00. The assessing authority also passed a penalty order on 20.1.2005 levying penalty of Rs. 5,70,855/-, which is five times of the tax due on Rs. 1,14,171/-, on the suppressed turn over of Rs. 11,41,714/-.

Aggrieved by the said assessment order, petitioner preferred appeals before the Appellate Deputy Commissioner (CT), Vijayawada, the 2nd respondent herein, and the 2nd respondent allowed the appeal filed by the petitioner questioning the assessment order, whereas it dismissed the appeal filed by the petitioner questioning the imposition of penalty. Being aggrieved by the dismissal order, the petitioner preferred second appeal before the Sales Tax Appellate Tribunal. During the pendency of the appeal, the petitioner preferred an application for stay before the 1st respondent. The 1st respondent, through the impugned order, rejected the stay application. Aggrieved, the petitioner filed the present writ petition.

The grievance of the petitioner is that the 1st respondent without noticing the fact that the appeal filed by the petitioner before the 2nd respondent has been allowed and that the appeal filed by him questioning the penalty has been pending with the STAT, has quite mechanically rejected the stay application. He, therefore, prayed that the writ petition be allowed and the impugned order be quashed.

Heard the learned counsel for the parties and perused the record.

There is no dispute about the fact that the appeal preferred by the petitioner against the assessment order has been allowed by the

2nd respondent. There is also no dispute about the fact that the second appeal filed by the petitioner questioning the imposition of penalty is pending before the S.T.A.T. In the circumstances, we feel that interest of justice would have been met if stay was granted pending appeal subject to deposit of 25% of the penalty amount. Therefore, we set aside the order of the authority and direct that 25% of the penalty amount shall be paid by the petitioner within a period of six weeks from today. For six weeks, there shall be an unconditional stay and stay shall continue till disposal of appeal, provided the amount is deposited within the stipulated time. The deposit of amount shall be without prejudice to the rights of the petitioner in appeal. If any amount has already been paid by the petitioner, the same shall be given credit to.

The Writ Petition is disposed of accordingly. No costs.

T. MEENA KUMARI,J

DATE: 13th December, 2007

G. ROHINI, ,J

Note:

Furnish c.c. by 18.12.2007

b/o

pnb